

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
SOUTHWESTERN DIVISION**

ROBERT BROWN and KELSA BROWN,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 05-5159-CV-SW-FJG
)	
FREEMAN HEALTH SYSTEM,)	
)	
Defendant.)	

ORDER

Currently pending before the Court is defendant's Motion to Strike (Doc. # 35). Defendant seeks to strike two aspects of plaintiff's Second Amended Complaint: 1) plaintiff's request for a jury trial and 2) plaintiff's request for monetary relief for breach of fiduciary duty.

Plaintiffs respond and state that they withdraw their request for a jury trial. With regard to the second issue, plaintiffs state that they are not alleging a cause of action under 29 U.S.C. § 1132(a), or the related section, 29 U.S.C. § 1109 for breach of fiduciary duty. Rather, plaintiffs state they are alleging a claim for recovery of benefits under 29 U.S.C. § 1132(a)(1)(B). Therefore, as plaintiff's have now clarified their claim, the Court sees no need to strike ¶ 28 of plaintiff's Second Amended Complaint. Therefore, the Court hereby **DENIES** defendant's Motion to Strike (Doc. # 35).

Date: February 23, 2006
Kansas City, Missouri

S/ FERNANDO J. GAITAN, JR.
Fernando J. Gaitan, Jr.
United States District Judge